

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

03/27/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000560

FILED: \_\_\_\_\_

STATE OF ARIZONA

LAJA K M THOMPSON

v.

LEE S FARR

CRAIG W PENROD

REMAND DESK CR-CCC  
TEMPE JUSTICE CT-EAST

MINUTE ENTRY

EAST TEMPE JUSTICE COURT

Cit. No. #77016

Charge: B. DUI ALCOHOL  
C. DUI W/A LEVEL AT ABOVE .10

DOB: 11/18/73

DOC: 07/29/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court heard oral argument on this case on March 4, 2002. This matter has been under advisement since that date.

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This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the East Tempe Court, and the Memoranda submitted.

Appellant, Lee S. Farr, was charge with Driving While Under the Influence of Intoxicating Liquor and having a Blood Alcohol Level greater than .10. Appellant filed a Motion to Suppress the results of the breath test on March 23, 2001. Appellant's motion was encaptioned "Motion in Limine".

The only issue raised by the Appellant is the failure of the trial court to hold an evidentiary hearing on his Motion in Limine. The trial judge denied Appellant's Motion in Limine on May 26, 2001 without an evidentiary hearing or oral argument.

The Court finds error in the trial court's failure to hold an evidentiary hearing on Appellant's Motion in Limine, predicated upon an alleged violation of his constitutionally guaranteed rights. The Arizona Rules of Criminal Procedure clearly contemplate an evidentiary hearing where the Defendant has an obligation of establishing a "*prima facie* case that the evidence taken should be suppressed."<sup>3</sup> The rules further provide that once the Defendant establishes a *prima facie* case, then the prosecutor "shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial."<sup>4</sup> Appellant was not given an opportunity to present any evidence as the trial judge summarily denied his motion.

Having found error, this Court's analysis is not complete without considering whether the error could be considered harmless error. The Arizona Supreme Court has previously defined fundamental error as an error that:

Reaches the foundation of the case or

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<sup>3</sup> Rule 16.2(b), Arizona Rules of Criminal Procedure.

<sup>4</sup> Id.

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takes from the Defendant a right essential to his defense, or is an error of such dimensions that it cannot be said it is possible for a Defendant to have had a fair trial.<sup>7</sup>

In this case it is clear that Appellant's right to an evidentiary hearing on his Motion in Limine (in reality a Motion to Suppress) was an error of such constitutional dimensions that this Court cannot say it was possible for Appellant to have had a fair trial.

IT IS THEREFORE ORDERED reversing the judgments of guilt and sentences imposed by the East Tempe Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court for an evidentiary hearing on Appellant's Motion in Limine (Motion to Suppress Breath Test Results) and a new trial.

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<sup>7</sup> State v. King, 158 Ariz., 419, 424, 763 P.2d 239, 244 (1988).  
Docket Code 512